

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERIK LYBARGER,	:
Petitioner	:
v.	: Case No. 3:13-cv-65-KRG-KAP
JOHN PREBISH, WARDEN,	:
CAMBRIA COUNTY PRISON,	:
Respondent	:

Order, Report and Recommendation

Order and Recommendation

Petitioner Lybarger's motion to proceed *in forma pauperis*, docket no. 1, is granted. The Clerk shall add the District Attorney of Cambria County as counsel for the respondent. The Clerk shall serve the petition by ECF upon the respondent by the District Attorney of Cambria County. I recommend under 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts that the petition be dismissed without a certificate of appealability.

Report

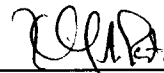
This is an abbreviated and repetitive petition following the denial of the petition filed at Case No. 3:13-cv-16-KRG-KAP (W.D.Pa.), attacking petitioner's pretrial detention related to a criminal charge against him at No. CP-11-CR-929-2012 (C.P.Cambria). Petitioner Lybarger says he has established clear and convincing evidence of gross judicial misconduct that will affect his upcoming trial in the Court of Common Pleas of Cambria County. Without repeating what I wrote in the earlier matter and leaving aside all legal niceties, petitioner should understand that a conclusory

statement, which is all that he offers, is not sufficient to show any entitlement to a writ from this court.

A certificate of appealability should not be issued unless a habeas petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Petitioner has made no colorable showing of any constitutional claim. No certificate of appealability should issue.

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have fourteen days to serve and file written objections to this Report and Recommendation.

DATE: April 2, 2013



Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel of record and by U.S. Mail to:

Erik Lybarger 12-551
Cambria County Prison
425 Manor Drive
Ebensburg, PA 15931